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In the Supreme Court of the United States

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OCTOBER TERM, 1968.

No. [redacted] 66

ANGHEL GOLDSTEIN, aka Andrei Pietraru,
IULIU NASTA, aka Julius Nasta and
GHEORGHE FUNDI,
on behalf of themselves and all others similarly situated,

Appellants,

vs.

JOSEPH A. COX and SAMUEL DiFALCO,
Surrogates of the County of New York,
EDWARD F. SILVER,
Surrogate of the County of Kings,
CHRISTOPHER C. McGRATH,
Surrogate of the County of Bronx,
JOHN T. CLANCY,
Surrogate of the County of Queens,
ARTHUR LEVITT,
State Comptroller,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

JURISDICTIONAL STATEMENT.

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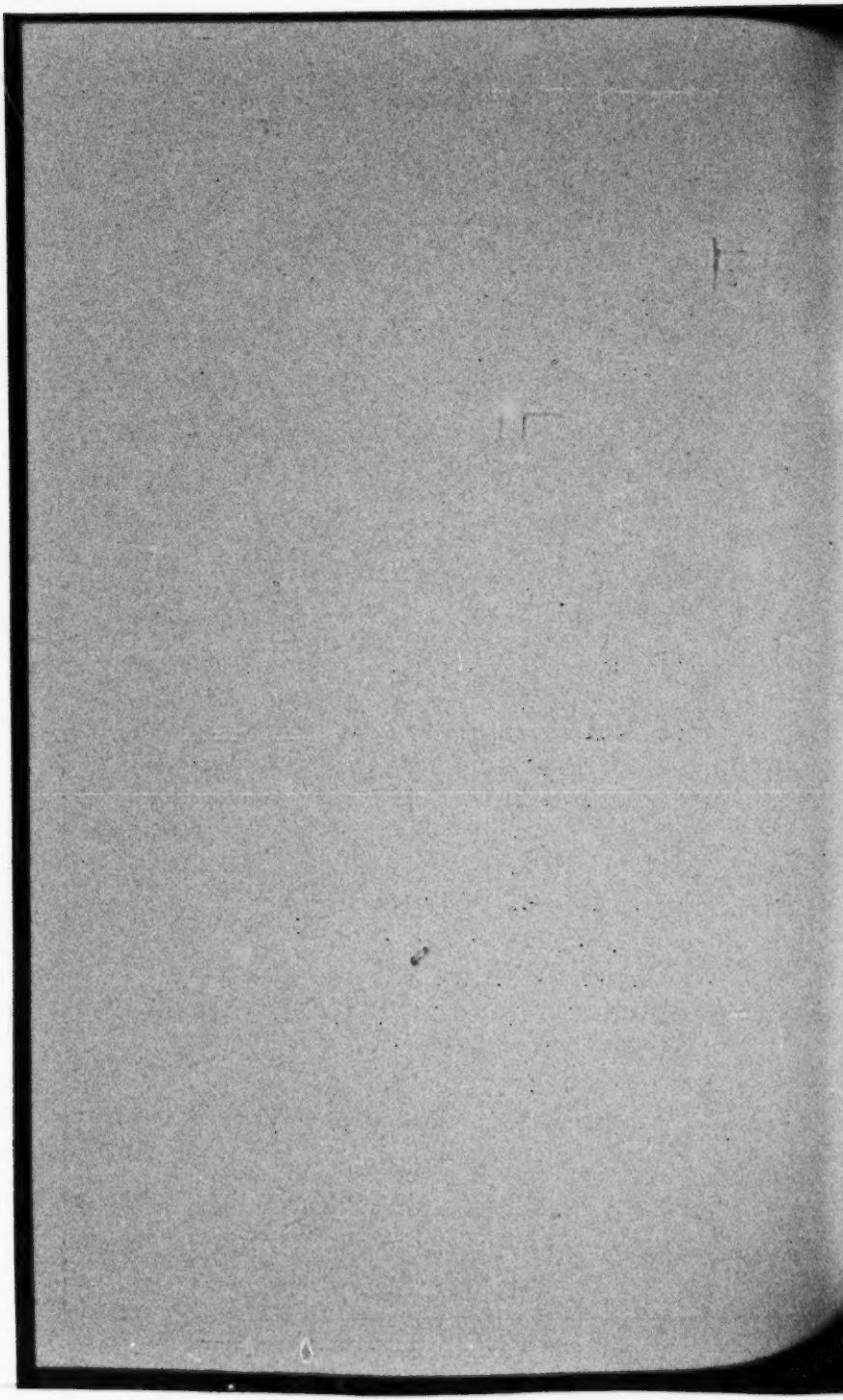

TABLE OF CONTENTS.

Jurisdictional Statement 1

Opinion Below 2

Jurisdiction 2

Questions Presented 2

Statutes Involved 3

Statement of Case 3

The Questions Are Substantial 4

1. The policy of New York, which is premised upon Section 2218 of the Surrogate's Court Procedure Act, is an unconstitutional interference with the exclusive power of the federal government to conduct the foreign affairs of this country, as held in Zschernig v. Miller, 389 U. S. 429 4

2. The policy of the State of New York, being challenged herein, is contrary to the policy of the Federal Government which permits the free flow of funds to Romania 9

Appendices:

A. Opinion of the District Court, Southern District of New York 11

B. Statutes 21

C. Complaint 22

D. Motion For Summary Judgment With Affidavit 29

E. Letter of Counsel to Chief Judge of the U. S. District Court, Southern District of New York 37

F. Letter of District Court in Reply to Letter of Counsel 38

G. Letter of Department of Audit and Control, State of New York, to Counsel 39

TABLE OF AUTHORITIES.

Cases.

Braier, Matter of, 305 N.Y. 148, appeal dism'd, sub nom., *Kalmane v. Green*, 346 U. S. 802 (1953) 7

Fergusan v. Skrupa, 372 U.S. 726 2

Gorun et al., v. Fall, et al., No. 496, Oct. Term, 1968, decided January 20, 1969 ..... 9, 10

Greenberg, In re, 46 Misc. 2d 883, 261 N.Y.S. 2d 176 (Surr. Ct. 1964), aff'd 24 App. Div. 2d 435 (1st Department, 1965), leave to appeal denied, 17 N.Y. 2d 417 (December 30, 1965) 5, 6

Harmoza, Matter of (Surrogate's Court, Nassau County), N.Y.L.J., May 27, 1968, p. 26, col. 1 7

Ioannou v. New York, No. 191, October Term, 1967 7

Kolovrat v. Oregon, 366 U. S. 187 (1961) 10

St. John v. Wisconsin Employment Relations Board, 340 U. S. 441 2

Toomer v. Witsell, 334 U. S. 385 2

United States v. Pink, 315 U.S. 203 (1942) 10

Zadlo, Matter of (Surrogate's Court, Westchester County # 10473) 7

Zschernig v. Miller, 389 U. S. 429 ..... 3, 4, 6, 7, 8, 10

Statutes, Rules and Regulations.

8 C. F. R. 511 (25 Fed. Reg. 3458, 3526) 3, 22

31 C. F. R. 211.3 ..... 3, 21

F. R. C. P. 23(a) 2

Surrogate's Procedure Act of the State of New York, Section 2218 (formerly 269-a) 2, 3, 4, 7, 10, 11

28 U.S.C. 1253 and 2101(b) 2

28 U.S.C. 2281 2

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Surrogate of the County of Queens,
ARTHUR LEVITT,
State Comptroller,

Appellees.

On Appeal From the United States District Court
For the Southern District of New York.

JURISDICTIONAL STATEMENT.

Appellants appeal from the order and judgment of the United States District Court for the Southern District of New York, entered on December 20, 1968, denying the plaintiffs' motion for summary judgment, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW.

The opinion of the District Court is unreported and attached hereto as Appendix A.

JURISDICTION.

This suit was brought under 28 U. S. C. Section 2281, as a class suit pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, to challenge the constitutionality and to enjoin the enforcement of Section 269-a, now Section 2218, New York Surrogate's Court Procedure Act. (See footnote pp. 11 and 12 of Opinion, Appendix A.) The judgment of the District Court was entered on December 20, 1968, and notice of appeal was filed in that court on February 13, 1969. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section, 1253 and 2101(b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Toomer v. Witsell*, 334 U. S. 385; *St. John v. Wisconsin Employment Relations Board*, 340 U. S. 441; *Fergusan v. Skrupa*, 372 U. S. 726.

QUESTIONS PRESENTED.

1. Whether Section 2218 (formerly 269-a) of the Surrogate's Procedure Act of the State of New York is unconstitutional?

2. Whether the policy of the Federal government permitting the free flow of funds to Romania, based upon the agreement of March 30, 1960 with Romania, precludes New York from applying Section 2218 in order to withhold all or part of the funds belonging to a resident or national of Romania from a decedent's Estate or otherwise?

STATUTES INVOLVED.

Section 2218 (formerly 269-a) of the Surrogate's Procedure Act, of the State of New York (Appendix A, p. 11, footnote), Title 8, Section 511, C. F. R. (25 Fed. Reg. 3458, 3526); 31 CFR Section 211.3, set forth in Appendix B hereto.

STATEMENT OF CASE.

The complaint herein (Appendix C) challenges the constitutionality of the New York Surrogate's Procedure Act, Section 2218,[1] and the policy of the appellees predicated on the authority of such statute with regard to the rights of residents of Romania. As victims of such policy, whereby funds belonging to them have been and are being withheld from them by the appellees, the appellants sought to convene a special tribunal of three judges to pass on the constitutionality of the New York act and to enjoin its application. Both the District Judge and the Court of Appeals denied the request for a three judge court. On January 15, 1968, this Court, in this case, entered a per curiam order, 389 U. S. 581, and whereby it granted certiorari, summarily vacated the judgment of the Court of Appeals herein, and remanded the case to the Court of Appeals "for further consideration in the light of Zschernig v. Miller," 389 U. S. 429. On March 8, 1968, the Court of Appeals entered its order remanding Goldstein back to the District Court "for consideration of the constitutional issues by a three judge court pursuant to 28 U. S. C. Section 2281." In view of the decision in *Zschernig*, the appellants moved for summary judgment after issue was joined (Appendix D).

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[1] At the time of the filing of the complaint herein, the statute was 269-a of the Surrogate's Court Act. It has been subsequently amended, and will be referred to herein as Section 2218.

Inexplicably, the motion for summary judgment came on for hearing on April 23, 1968, before one District Judge who did nothing at the time except indicate that he would take the matter under advisement. After some confusion (see appendices E and F), the motion for summary judgment was heard by a three judge court on June 24, 1968, and, on December 20, 1968, said court entered its order denying the motion for summary judgment.

THE QUESTIONS ARE SUBSTANTIAL.

1. The policy of New York, which is premised upon Section 2218 of the Surrogate's Court Procedure Act, is an unconstitutional interference with the exclusive power of the federal government to conduct the foreign affairs of this country, as held in Zschernig v. Miller, 389 U. S. 429.

The policy of the State of New York, which petitioners challenge as unconstitutional, is accurately set forth by the appellee Surrogate of King's County in his letter of October 15, 1965, in reply to a request addressed to him by an heir in Romania for the release and immediate payment of his distributive share in the modest amount of $2,989.63. The pertinent portion of said appellee's letter reads as follows:

> "I have given serious consideration to your letter of August 28, 1965, in which you request the release of your distributive share in the above estate. It is the public policy of the State of New York to withhold distribution to legatees who would not have the benefit or use or control of their bequest. The Appellate Courts of this State have held that residents of Rumania are within this description. As a Judge of the Surrogate's Court I am bound by the ruling of the higher court, and as an individual I am in full agreement with it. Accordingly, and despite my per-

sonal desire to help you because of your advanced age, physical infirmity and need for the money, I must advise you that if formal application for the payment of your bequest in full is made to me, I would be constrained to deny the same." (See p. 2, par. a, aff'd in Support of Motion for Summary Judgment.)

A recent and the latest affirmation of this policy regarding Romania is to be found in the Surrogate's decision in *In re Greenberg,* 46 Misc. 2d 883, 261 N.Y.S. 2d 176 (Surr. Ct. 1964), aff'd 24 App. Div. 2d 435 (1st Department, 1965), leave to appeal denied, 17 N.Y. 2d 417 (December 30, 1965).

It is difficult to comprehend the statement in the opinion of the lower court (p. 14) that "in the case before us there is no showing that New York courts have engaged in the conduct criticized in Zschernig," in the light of the facts set forth in paragraphs 3 (a) (b), 4, 5, 6, 7, and 8 of the affidavit in support of the motion for summary judgment (see appendix D). A few excerpts therefrom will readily reveal the fallacy of the court's conclusion. The appellee, Comptroller of the State, stated regularly as follows:

"* * * pursuant to a policy recommended by our Attorney General, we are not able to effect payments to residents of certain Eastern European Countries, including Romania because the situation exists which makes it doubtful as to whether the recipients of our checks would receive full value for the dollar amount."

"* * * The Department of Law however has advised us that it will continue its position as to payments to distributees domiciled in Rumania. A recent decision in the Surrogate's Court, New York County (Matter of Greenberg, New York Law Journal, June 16, 1964) upheld the position of the Attorney General of the State."

"* * * the policy of this Department is to withhold any such payments until and when the parties residing within such countries are outside of the jurisdiction of the Soviet Union."

"* * * this Department will not honor any claims from Rumanian nationals at the present time. March 4, 1963."

In addition, the court had before it various decrees of the New York Surrogates which provided for automatic withholding of funds belonging to Romanian distributees "pursuant to section 269-a of the Surrogate's Court Act (*Matter of Greenberg,* NYLJ, June 16, 1964, Cox, S.), aff'd App. Div. 1st. Dept. NYLJ." Since the decision in *Greenberg,* the funds belonging to a Romanian beneficiary have been and are ordered withheld instantly, on such authority, without according the beneficiary or his legal representative an opportunity to challenge the decree. It has been and still is the unalterable policy of Courts and authorities of New York to withhold funds of Romanian nationals for the sole reason that the beneficiary resides in Romania.

Interestingly enough, the lower court did not find the policy of New York, and, the application of its so-called "Iron Curtain" law, offensive to the Federal Constitution despite the findings and conclusions of the New York Courts in the case of *In re Greenberg* (pars. 4, 5, 6, affidavit in support of motion for summary judgment). In that case, both the Surrogate and the Appellate Court premised their conclusions upon the foreign exchange laws of Romania, which they erroneously considered confiscatory and unfair, and upon other internal conditions and circumstances in the country. This, however, was inconsequential to the lower court in its consideration of the foreign affairs aspect of the problem.

Following the decision of this Court in *Zschernig,*

undersigned counsel requested payment of the funds belonging to appellant, Iuliu Nasta, from the appellee-state comptroller, Arthur Levitt. In response thereto, said appellee stated (Appendix G):

> "Reference is made to your inquiry dated July 31, 1968. Please be advised that there has been no change in the policy of this Department not to transmit any funds to persons residing in Romania or to attorneys-in-fact for such persons. We have been advised that the Zschernig case referred to in your letter, does not apply to the situation involved herein and that the Goldstein case is now on appeal before the United States Court of Appeals for the Second Circuit. Our policy will continue in effect pending determination of the issues presented in the Goldstein case."

In other pending cases, Surrogates have upheld the constitutionality of Section 2218 upon the ground that *Zschernig* did not pass upon or decide the constitutionality of the New York statute, or that *Matter of Braier,* 305 N.Y. 148, appeal dism'd, sub nom., *Kalmane v. Green,* 346 U. S. 802 (1953), is still controlling despite *Zschernig, Matter of Zadlo* (Surrogate's Court, Westchester County #10473), *Matter of Harmoza* (Surrogate's Court, Nassau County), N.Y.L.J., May 27, 1968, p. 26, col. 1.

This present attitude on the part of New York is strange indeed, to say the least, in view of the representation of the Attorney General of New York to this Court in the case of *Ioannou v. New York,* No. 191, October Term, 1967.

We believe that the conclusions to be drawn from *Zschernig* indicate clearly that statutory restrictions such as contained in the New York law constitute an intrusion by the State into the field of foreign affairs which the Constitution entrusts to the President and Congress. In this respect, the Court stated:

> "* * * Yet, such forbidden state activity * * * has infected *each* of the three provisions of Section 11.070, as applied by Oregon." (Emphasis ours.)

Section 2218 of the New York statute, requiring a showing by the foreign heir that he will have the benefit, use or control of the funds due him, is identical with one of the three provisions of the Oregon act which was struck down by this Court as an impermissible interference with federal power over foreign affairs. This Court, in *Zschernig,* extended its opinion to the statutes and decisions of California, Montana, New York and Pennsylvania with a view, we believe, to making clear that "the rationale of that decision applies to custodial statutes such as New York has as well as to escheat statutes like Oregon's."

That the New York statute cannot be applied effectively without involving the courts in the kind of foreign relations activities proscribed by the Constitution, has been made equally clear by Mr. Justice Stewart, in his concurring opinion in *Zschernig,* in which he was joined by Mr. Justice Brennan, wherein he stated, as follows:

> "I believe that all three of the statutory requirements on their face are contrary to the Constitution of the United States. In my view, *each* of the three provisions of the Oregon law suffers from the same fatal infirmity. *All three launch the State upon a prohibited voyage into a domain of exclusively federal competence.* Any realistic attempt to apply any of the three criteria would necessarily involve the Oregon courts in an evaluation, either expressed or implied, of the administration of foreign law, the credibility of foreign diplomatic statements, and the policies of foreign governments. Of course, state courts must routinely construe foreign law in the resolution of controversies properly before them, *but here the courts of Oregon are thrust into these inquiries only because the Oregon legislature has*

framed its inheritance laws to the prejudice of nations whose policies it disapproves and thus has trespassed upon an area where the Constitution contemplates that only the National Government shall operate." (Emphasis supplied.)

It is readily apparent from the foregoing declaration that the New York statute "suffers from the same fatal infirmity."

2. The policy of the State of New York, being challenged herein, is contrary to the policy of the Federal Government which permits the free flow of funds to Romania.

In the recent appeal to this Court from the decision of a three judge district court in Montana, *Gorun et al., v. Fall, et al.*, No. 496, Oct. Term, 1968, decided January 20, 1969, Mr. Justice Douglas, in an opinion concurred in by Mr. Justice Black, Mr. Justice Harlan, and Mr. Justice Fortas, declared relevant hereto, as follows:

"Federal Policy permits the free flow of funds to Romania. On March 30, 1960, we entered into an agreement with Romania, by which we agreed to release all blocked assets belonging to Romania. See 25 Fed. Reg. 3458. At the same time, Romania was removed from the list of countries to which the sending of public funds is prohibited. See 25 Fed. Reg. 3526; 31 CFR ss 211.2. *As our opinion in Zschernig makes clear, a state probate judge is not authorized to make or apply a probate rule contrary to that policy.*" (Emphasis supplied.)

That the action of the Federal Government in concluding the Financial Agreement of 1960 with Romania constitutes new foreign policy with relation to that country is clear. Agreements entered into by our government have the same force and effect and attain the same stature

as treaties in the formulation of foreign policy. In view of this agreement, the Secretary of the Treasury of the United States determined that residents and nationals of Romania would have the use, benefit or control of money transmitted to them from the United States. This determination by the Executive Department of the United States overrides any conflicting determination that the courts of New York may seek to make pursuant to the policy of the state as set forth in Section 2218. With regard hereto, this Court, in *Kolovrat v. Oregon*, 366 U. S. 187 (1961) declared

> "* * * state policies as to rights of aliens to inherit must give way under our Constitution's Supremacy Clause to 'overriding' federal treaties and conflicting arrangements."

For "state law must yield when it is inconsistent with, or impairs the policy or provisions of a treaty or *of an international compact or agreement.*" *United States v. Pink*, 315 U. S. 203, 231 (1942). (Italics ours.)

The Court also stated in *Pink*, page 233:

> "No state can rewrite our foreign policy to conform to its own domestic policies. Power over external affairs is not shared by the State; it is vested in the national government exclusively * * *."

It is submitted, therefore, that the decision of the district court fails to conform to the rationale and decision of this Court in *Zschernig* and *Gorun v. Fall*, and that it authorizes the state courts to engage in activities prohibited by the Constitution of the United States. We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

JOHN R. VINTILLA,
Counsel for Appellants.

APPENDIX A.

OPINION OF THE DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK.

McLEAN, *District Judge.*

The three plaintiffs in this action are nationals and residents of Rumania. They sue "on behalf of themselves and all other residents of Romania, similarly situated" for a judgment declaring that Section 2218 of the New York Surrogate's Court Procedure Act, formerly Section 269-a of the Surrogate's Court Act, is unconstitutional.*

---

* This statute now reads as follows:

"1. (a) Where it shall appear that an alien legatee, distributee or beneficiary is domiciled or resident within a country to which checks or warrants drawn against funds of the United States may not be transmitted by reason of any executive order, regulation or similar determination of the United States government or any department or agency thereof, the court shall direct that the money or property to which such alien would otherwise be entitled shall be paid into court for the benefit of said alien or the person or persons who thereafter may appear to be entitled thereto. The money or property so paid into court shall be paid out only upon order of the surrogate or pursuant to the order or judgment of a court of competent jurisdiction.

(b) Any assignment of a fund which is required to be deposited pursuant to the provisions of paragraph one (a) of this section shall not be effective to confer upon the assignee any greater right to the delivery of the fund than the assignor would otherwise enjoy.

2. Where it shall appear that a beneficiary would not have the benefit or use or control of the money or other property due him or where other special circumstances make it desirable that such payment should be withheld the decree may direct that such money or property be paid into court for the benefit of the beneficiary or the person or persons who may thereafter appear entitled thereto. The money or property so paid into court shall be paid out only upon order of the court or pursuant to the order or judgment of a court of competent jurisdiction.

3. In any such proceeding where it is uncertain that an alien beneficiary or fiduciary not residing within the United States, the District of Columbia, the Commonwealth of Puerto Rico or a territory or possession of the United States

(Continued on following page)

They also seek an injunction restraining five New York Surrogates and the Comptroller of the State of New York from enforcing and applying it.

The prior history of this action may be briefly stated. In the spring of 1967 plaintiffs moved for an order convening a three-judge court pursuant to 28 U.S.C. § 2281. They also moved for an injunction pendente lite. The district court denied the preliminary injunction. It also denied the request for a three-judge court on the ground that, although a substantial federal question was raised, this question was one of federal "supremacy" which, under *Swift & Co. v. Wickham*, 382 U. S. 111 (1965), was to be decided by one judge, not by three.

Goldstein v. Cox, 66 Civ. 4487 (S.D.N.Y. April 4, 1967).

On September 27, 1967, the Court of Appeals, from the bench, affirmed the order of the district court. The Supreme Court, however, vacated the order of the Court of Appeals and remanded the case to the Court of Appeals "for further consideration in light of *Zschernig v. Miller*." (389 U.S. 429 (1968).)

Goldstein v. Cox, 389 U.S. 581 (1968).

The Court of Appeals thereupon reversed the order of the district court and remanded the case for consideration of the constitutional issues by a three-judge court.

Goldstein v. Cox, 391 F.2d 586 (2d Cir. 1968).

(Continued from preceding page)

would have the benefit or use or control of the money or property due him the burden of proving that the alien beneficiary will receive the benefit or use or control of the money or property due him shall be upon him or the person claiming from, through or under him."

Section 1 was added by Ch. 998 of the Laws of 1968 which became effective on June 22, 1968, after the motion now under consideration was made.

Plaintiffs then moved for summary judgment. That is the motion which we are now called upon to decide.

The motion is supported only by an affidavit of plaintiff's attorney which is devoted primarily to a discussion of the law. It contains few facts. As to plaintiff Goldstein, it says only:

> "The Surrogate, in the judicial settlement in the Estate of Maurice Siegel, wherein the rights of plaintiff, Anghel Goldstein are involved, decreed:
>
> > 'Ordered, Adjudged and Decreed that the distributive share to which the said Angel Goldstein is entitled be paid into this Court by depositing the sum of $2,230.40 wth the Treasurer of the City of New York to the credit of this proceeding, and the Treasurer of the City of New York hereby is directed to deposit said sum of $2,230.40 in any savings bank located in the County of Bronx for the benefit of said Angel Goldstein and subject to the further order of this court, and it is further.' "

The affidavit contains a similar statement as to plaintiff Fundi, reading as follows:

> "The defendant, Surrogate Samuel DiFalco, in the estate of Jerotheos Stavrou, in which plaintiff, George Fundi is a distributee, in settling said estate, ordered (NYLJ, 8/3/65), pertinent hereto, as follows:
>
> > 'Any sum payable to legatees or distributees in Rumania will be deposited in court pursuant to section 269-a of the Surrogate's Court Act (Matter of Greenberg, NYLJ, June 16, 1964 (Cox, S.), aff'd App. Div. 1st Dept. NYLJ.' "

The text of the affidavit does not refer to plaintiff Nasta. Annexed to the affidavit, however, are copies of letters from the office of the New York Comptroller dated respectively February 28, 1962 and November 16, 1964, the first of which is addressed to Juliu Nasta in Bucharest,

Rumania, and the second to plaintiffs' attorney. Each letter is captioned:

"NASTA, JULIU
Atty-in-Fact for
Opreana Comanicu
J. P. Morgan & Co.
Acct. BD#47801
Abandoned Property"

There is no explanation of what the "abandoned property" is, how it came to be abandoned, or whether it has any connection with the statute here under consideration. In each letter the Comptroller's Office stated in substance that pursuant to a policy recommended by the New York Attorney General, the Comptroller was not in a position to make payment of residents of Rumania.

The only other factual material submitted in support of this motion consists of a copy of a letter dated October 15, 1965 from the then Surrogate of Kings County to Isac Silianu (not a plaintiff) in Bucharest, Rumania, and copies of five letters from the office of the New York Comptroller bearing various dates in 1962, 1963 and 1966, one of which is addressed to Borbala Barbieri (not a plaintiff) in Bucharest, Rumania, and the others to the same attorney who represents the plaintiffs in this action.

The Surrogate's letter stated in substance that if Isac Silianu were to make formal application for the payment of his bequest in full, the Surrogate would be constrained to deny it, but that the Surrogate would give "sympathetic consideration to a request for transmittal to you in periodic installments of small sums for purchase of food and clothing parcels, if a demonstration can be made of the feasibility thereof."

The Comptroller's letters were each headed "Abandoned Property." Two of them indicate that the

property consists of an account in J. P. Morgan & Co. The other three refer to "Prunder, Denette, Estate of." In each letter the Comptroller's office in substance declined to pay a claim of a resident of Rumania or of individuals within the jurisdiction of the Soviet Union.

The motion is opposed by an affidavit of an Assistant Attorney General of New York. That affidavit is entirely argumentative. It can fairly be said to contain no facts at all.

On this record we are asked to hold as a matter of law that Section 2218 is unconstitutional because it interferes with the exclusive prerogative of the federal government to conduct the foreign affairs of the United States. Plaintiffs claim that this result is required by the Supreme Court's decision in *Zschernig*.

The validity of the statute, as it read at the time, was twice upheld by the New York Court of Appeals prior to *Zschernig*.

> *Matter of Braier*, 305 N.Y. 148 (1953), *appeal dismissed sub nom. Kalmane v. Green*, 346 U.S. 802 (1953);
>
> *Matter of Marek*, 11 N.Y.2d 740 (1962), *appeal dismissed sub nom. Ioannou v. New York*, 371 U.S. 30 (1962).

In each case the Supreme Court dismissed the appeal from the New York Court of Appeals' decision for want of a substantial federal question. As far as appears from the Court of Appeals' opinion in *Braier* and from the memorandum in *Marek* (in which no opinion was written), the ground upon which the constitutionality of the statute is challenged in the present action was not raised or decided in either case.

Recently the unsuccessful claimant in *Marek* (Ioannou) moved in the Supreme Court for leave to file a peti-

tion for rehearing. The Supreme Court denied the motion "upon the representation of the Attorney General of New York that the movant may file a new application 'to withdraw the funds deposited with the New York City Treasurer' in the light of changed circumstances. See *Zschernig v. Miller*, 389 U.S. 429; *Goldstein v. Cox*, 389 U.S. 581."

Ioannou v. New York, 391 U.S. 604 (1968).

In *Zschernig*, the Supreme Court had before it an Oregon statute which provided in substance that property of an Oregon decedent which would otherwise pass by succession or testamentary disposition to a nonresident alien would, in the absence of other eligible heirs, devisees or legatees, escheat to the state of Oregon unless the alien proved (1) the existence of a reciprocal right of a United States citizen to take property on the same terms as a citizen or inhabitant of the foreign country; (2) the right of United States citizens to receive payment here of funds from estates in the foreign country; and (3) the right of the alien to receive the benefit, use or control of the proceeds of Oregon estates, "without confiscation" by the government of his country. The Court held this statute unconstitutional because it impaired "the effective exercise of the Nation's foreign policy." 389 U.S. at 440.

Subsequent to this decision, the New York Court of Appeals again considered the constitutionality of Section 2218 and, despite *Zschernig*, declined to hold the statute unconstitutional on the record before it.

Matter of Leikind, 22 N.Y.2d 346 (1968).

We are called upon to decide whether, on the record now before us, we are impelled to a conclusion similar to, or different from, the conclusion which the New York Court of Appeals reached in *Leikind*.

The decision depends upon the reasons given by the Supreme Court in *Zschernig* for invalidating the Oregon statute. Before considering those reasons, however, mention must be made of an earlier Supreme Court decision, *Clark v. Allen,* 331 U.S. 503 (1947).

In *Clark,* the Court passed upon a California statute which contained reciprocal provisions substantially identical with the first two requirements in the Oregon statute, but which did not contain the benefit, use and control requirement. The Court upheld the constitutionality of the California statute as against a claim that it constituted an interference by the state of California in the field of foreign affairs.

In *Zschernig,* the Supreme Court expressly declined to overrule *Clark v. Allen.* Instead, it distinguished it, saying:

> "We were there concerned with the words of a statute on its face, not the manner of its application." 389 U.S. at 433.

The Court went on to point out that state courts frequently construe and apply the laws of foreign nations and that:

> "It has never been seriously suggested that state courts are precluded from performing that function, albeit there is a remote possibility that any holding may disturb a foreign nation * * *." 389 U.S. at 433.

But the Court said:

> "It now appears that in this reciprocity area under inheritance statutes, the probate courts of various States have launched inquiries into the type of governments that obtain in a particular foreign nation * * *." 389 U.S. at 433-34.

The Court pointed out that the Oregon statute added to the requirement of reciprocity a new concept of confiscation and that this had "led into minute inquiries concerning the actual administration of foreign law * * *." 389 U.S. at 435. The Court documented this statement by quoting intemperate remarks contained in opinions of state court judges, such as, "Russia kicks the United States in the teeth all the time," and the like. 389 U.S. n. 8 at 437. The Court said that the Oregon statute "as construed seems to make unavoidable judicial criticism of nations established on a more authoritarian basis than our own." 389 U.S. at 440.

The Court concluded that:

> "It seems inescapable that the type of probate law that Oregon enforces affects international relations in a persistent and subtle way." 389 U.S. at 440.

On this basis the Court held the Oregon statute unconstitional.

Two justices concurring in a separate opinion stated that, while joining the opinion of the Court, they would go further and hold the Oregon statute unconstitutional on its face. Obviously, it was manifest to these two justices, as it is to us, that the opinion of the Court did not go this far, but held only that the Oregon statute was unconstitutional because of the manner of its application.

In *Leikind*, the New York Court of Appeals read the opinion of the Court in *Zschernig* as a decision dealing with the application of the statute by the Oregon courts. The Court of Appeals held that in the case before it there was no showing that "the lower courts in this case have currently engaged in the conduct criticized, and additionally illustrated in the footnotes of the *Zschernig* case, as interference with foreign relations." Consequently,

said the court, "there is no present warrant to reconsider the earlier rulings of this court sustaining the constitutionality of the statutes which preceded the present one [*i.e., Braier* and *Marek, supra*]." 22 N.Y.2d at 352.

The Court of Appeals recognized the possibility that the Supreme Court might extend the *Zschernig* rule in the future. Thus, it said that in *Zschernig*, the Supreme Court "arguably accepted 'benefit, use or control' provisions as valid, provided State courts did no more than 'routinely read' foreign laws and provided there was no palpable interference with foreign relations in their application." 22 N.Y.2d at 351-52. But the court conceded that "the sweep of the opinion might suggest to some that in a later case the court might hold that in reality no such statute could ever be restricted to a 'routine reading.' " 22 N.Y.2d n. 2 at 352.

In the case before us there is no showing that the New York courts have engaged in the conduct criticized in *Zschernig*. There is no showing and not even any claim that the New York courts have uttered any animadversions concerning Rumania. All we are told is that two New York Surrogates have directed that the distributive shares of plaintiffs Goldstein and Fundi in New York estates be deposited in court, pursuant to the statute, and that the office of the New York Comptroller has declined to turn over certain "abandoned properties" to persons resident in Rumania or in territories within the jurisdiction of the Soviet Union. We are not informed as to what investigation, if any, preceded these judicial and administrative decisions.

We conclude that this record is inadequate to justify this court in holding, summarily, that Section 2218 is unconstitutional under the *Zschernig* rule. Without any evidence whatever as to how Section 2218 has been applied in

this case, we are unable to say that it has been applied in such a way as to interfere with the foreign relations of the United States. We interpret the Supreme Court's recent ruling denying a rehearing in *Ioannou* as at least an indication that evidence of improper application of the statute is necessary.

We appreciate that the Supreme Court may eventually go further than it has thus far gone and that it may eventually hold that all benefit, use and control statutes are invalid regardless of how the state courts have applied them. But we conceive it to be our duty to enforce the law as it is, not as it may be in the future.

Accordingly, the motion for summary judgment is denied.

So ordered.

IRVING R. KAUFMAN,
U. S. C. J.

EDWARD C. MCLEAN,
U. S. D. J.

CHARLES TENNEY,
U. S. D. J.

Dated: December 18, 1968

APPENDIX B.

TITLE 31—MONEY AND FINANCE: TREASURY.

Chapter II—Fiscal Service, Department of the Treasury—Subchapter A—Bureau of Accounts.

Part 211—Delivery of Checks and Warrants to Addresses Outside the United States, Its Territories and Possessions.

Withholding of Delivery on Checks and Warrants.

Part 211, Subchapter A, Chapter II, Title 31, of the Code of Federal Regulations of the United States of America (appearing also as Treasury Department Circular No. 655 dated March 19, 1941, is supplemented) is hereby amended by revising § 211.3 (a) and (b) to read as follows:

§ 211.3 Withholding of delivery on checks and warants.

(a) The Secretary of the Treasury hereby determines that postal, transportation, or banking facilities in general or local conditions in Albania, Bulgaria, Communist-controlled China, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, the Union of Soviet Socialist Republics, the Russian Zone of Occupation of Germany, and the Russian Sector of Occupation of Berlin, Germany, are such that there is not a reasonable assurance that a payee in those areas will actually receive checks or warrants drawn against funds of the United States, or agencies or instrumentalities thereof, and be able to negotiate the same for full value.

TITLE 8—ALIENS AND NATIONALITY.

Chapter II—Office of Alien Property, Department of Justice—Part 511—Blocked Asse s.

General License.

Article VI of the Agreement between the United States of America and the Rumanian People's Republic Relating to Financial Questions Between the Two Countries, done at Washington, D. C., on March 30, 1960, provides that the United States will release its blocking controls over all Rumanian property in the United States. The following amendment of General License No. 101 effects such unblocking by deleting references to Rumania and persons within Rumania from subparagraphs (1) and (2) of § 511.101(a). This amendment relieves existing restrictions and does not impose any new requirements on the public and it is hereby found that notice, hearing and suspension of applicability are unnecessary.

APPENDIX C.

COMPLAINT.

Plaintiffs, complaining of the defendants, allege:

1. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1331, and also under Title 28, United States Code, Section 2281, being a suit in equity to challenge the constitutionality of Section 269-a of the New York Surrogate's Court Act and the policy predicated on the authority of such statute, and to enjoin the enforcement of the statute on the ground that it violates the rights secured to the plaintiff and others similarly situated under the Constitution of the United States,

and that the Statute infringes upon the exclusive power of the Federal Government over foreign affairs, as hereinafter more fully appears.

2. The Surrogate's Court Act, Section 269-a, provides as follows:

> "Where it shall appear that a legatee, distributee or beneficiary of a trust would not have the benefit or use or control of the money or other property due him, or where other special circumstances make it appear desirable that such payment should be withheld the decree may direct that such money or other property be paid into the surrogate's court for the benefit of such legatee, distributee, beneficiary of a trust, or such person or persons who may thereafter appear to be entitled thereto. Such money or other property so paid into court shall be paid out only by the special order of the surrogate or pursuant to the judgment of a court of competent jurisdiction."
>
> Surrogate's Court Act, Section 269-a(1).

3. Plaintiffs are nationals of Romania, and are residents and domiciled in said state. They bring this action on behalf of themselves and all other residents of Romania, similarly situated with respect to the matters here involved. They are so numerous as to make it impracticable to bring them all before the Court. There being identical or same questions of law and fact, a common relief being sought as will hereinafter more fully appear, plaintiffs brings this action as a class suit, pursuant to Rule 23(a) of the Federal Rules of Civil Procedure:

4. The defendants, Joseph A. Cox, S. Samuel DiFalco, Edward S. Silver, Christopher C. McGrath, John T. Clancy are the duly elected, qualified and acting judges of the Surrogate's Courts of New York, Kings, Bronx and Queens Counties, respectively.

5. The defendant, Arthur Levitt, is the duly appointed, qualified and acting Comptroller of the State of New York, and that as such officer he has in his possession and/or under his control, funds belonging to plaintiff, Iuliu Nasta, and other residents of Romania. That he has refused and continues to refuse to honor the claim of and to pay the funds belonging to the plaintiff, Iuliu Nasta, and continues to refuse to honor the claim of any Romanian national, on the basis of the existing policy of the state of New York not to effect payments to residents of certain Eastern European Countries including Romania, and that he refuses to make any payments until such time as those who are entitled to said payment are without the jurisdiction of Romania.

6. That the Surrogates of Bronx and New York counties have ordered the withholding of distribution to the plaintiffs, Anghel Goldstein and Gheorghe Fundi, distributees of the estate of Maurice Siegel, File No. 687 A—1950, and Jerotheos Stavrou, File No. P. 3152—1963, without notice or any opportunity to be heard, and solely because of the existing policy of the State of New York prohibiting the transfer of the funds to residents of Romania. It is the practice of these Surrogate-defendants in the settlement of the final account of an executor or administrator, to withhold the sum payable to a legatee or distributee in Romania and to order it deposited in court pursuant to Section 269-a of the Surrogate's Court Act.

7. The public policy of the State of New York governing the payment of the distributive shares of residents in Romania in decedent's estates, is predicated upon Section 269-a of the Surrogate's Court Act, and has been sustained by the Court of Appeals of New York in the Matter of Greenberg, motion for leave to appeal denied,

December 30, 1965, 17 N. Y. 2d, 417, 46 Misc. 2d, 383, 24 App. Div. Rep. 2d, 435.

8. On February 19, 1951, the United States Treasury Department, pursuant to the authority vested in it by P. L. No. 828, Section 5, 54 Stat. 1036, 31 U. S. C. A., Section 123, issued Treasury Circular 655, listing twelve countries, including Romania, to which the forwarding of public funds, such as social security benefits and veteran's pensions, was prohibited. The Treasury Department concluded, therefore, that with respect to checks or warrants drawn against funds of the United States in favor of a Romanian national, local conditions in Romania were such that there was not a reasonable assurance that a payee in that country would actually receive payment or be able to negotiate the check or warrant for full value, Title 31, Section 211.3(a).

9. On March 30, 1960, an agreement relating to financial questions was concluded at Washington, D. C. between the governments of the United States and of Romania. By virtue thereof, Romania was removed from the proscribed list of the United States Treasury Department of countries to which federal funds may not be transmitted, and, furthermore, all federal regulations of a blocking nature regarding Romanian nationals were removed, 31 C. F. R. Section 211.2 (a), 25 Federal Regulations, pages 3456, 3526. The present official policy of the United States regarding payment of funds to persons resident in Romania, is set forth in the United States Treasury Regulation 655, as amended in April 1960, and now declares that there is a reasonable assurance that a payee in that area will actually receive checks or warrants drawn against funds of the United States, and will be able to negotiate them for full value. That ever since April of

1960, the United States has been remitted checks and warrants representing social security benefits, veterans pensions and other public funds to residents in Romania without any problem or difficulty as to the receipt, and use and control thereof by the recipient.

10. The policy of the State of New York, as applied to the residents of Romania, as hereinabove set forth, encroaches upon and impairs the effective exercise of the power to conduct foreign relations which is constitutionally vested in the Federal Government to the exclusion of the State of New York.

11. The authoritative conclusion by The Treasury Department of the United States that a reasonable assurance exists that a payee in Romania will actually receive the funds remitted to him and will be able to negotiate checks or warrants for full value, and the consequent transfer of public funds to residents in Romania since April of 1960, constitutes official Federal policy, and therefore, the policy of the State of New York in withholding distribution to heirs, legatees or beneficiaries in Romania is in direct conflict with and in violation of, and must give way to overriding federal policy.

12. That Section 269-a of the Surrogate's Court Act of New York, as applied by these defendants to the rights of these plaintiffs and other residents of Romania, deprives them arbitrarily of their distributive shares, and constitutes an unconstitutional governmental interference without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

13. Defendants have established and are maintaining a policy and practice of denying residents of Romania their distributive shares, otherwise secured to them, solely, be-

cause of their place of residence, and that such practice unlawfully discriminates against the plaintiffs and others similarly situated of the equal protection of the laws guaranteed them by the Fourteenth Amendment insofar as the statute is applied only because of their place of residence.

14. That the defendants Surrogates and others have been withholding the distributive shares belonging to residents of Romania, pursuant to the aforementioned public policy of New York, for more than fifteen years, and the amount being withheld is in excess of one half million dollars.

15. Many of the plaintiffs and others similarly situated are in dire need and/or aged and desperately in need of these funds. A delay in ascertaining and determining the rights of the plaintiffs, and others similarly situated and affected, on whose behalf this suit is brought, will result in further denial and deprivation of their rights in the indefinite future by reason of the acts herein complained of. There is no other remedy afforded by law or statute against the illegal acts and conduct of the defendants, save the equity powers of this Court, and unless the relief prayed for is granted.

WHEREFORE, plaintiffs pray that a three judge court be convened, pursuant to Title 28 U. S. C., Section 2281, and for the following relief:

1. That this Court enter a judgment or decree declaring that the policy and practice of the defendants in denying these plaintiffs and others similarly situated the right to their distributive shares from decedent's estates and to other funds to which they are entitled on account of their residence in Romania is a denial of the rights secured to them by the Fifth and Fourteenth Amendments to the

United States Constitution and, therefore, unconstitutional and void.

2. That Section 269-a of the Surrogate's Act of New York, as applied by the defendants to the rights of these plaintiffs and others similarly affected, be declared unconstitutional.

3. That this Court issue a permanent injunction forever restraining and enjoining the defendants and each of them, their agents and employees, from denying plaintiffs, and others similarly situated the right to their distributive shares from decedents' estates, and to other funds to which they may be entitled; that the defendants, and each of them, their agents, and employees, be ordered and directed to take such action as shall be necessary to deliver the distributive shares and other funds which are due and owing to and being withheld from these plaintiffs and others similarly situated.

4. That pending the final hearing and determination of this complaint upon its merits, the Court issue a preliminary injunction, restraining the defendants and each of them, their agents, and employees, from denying the plaintiffs, and others similarly situated, the right to their distributive shares and other funds to which they may be entitled.

5. For such other and further relief which this Court may deem proper.

APPENDIX D.

MOTION FOR SUMMARY JUDGMENT WITH AFFIDAVIT.

Plaintiffs move the court as follows:

1. That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in plaintiffs' favor for the relief demanded in the complaint on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law; and, especially, in the light of *Zschernig v. Miller*, 36 L. W. 4120 (1/15/68), decided by the Supreme Court of the United States.

The Affidavit of John R. Vintilla is attached hereto in support of this motion.

JOHN R. VINTILLA,
EMANUEL ESCHWEGE,
NOVAK N. MARKU,
Attorneys for Plaintiffs.

AFFIDAVIT OF JOHN R. VINTILLA.

STATE OF OHIO,
COUNTY OF CUYAHOGA, SS.

John R. Vintilla, being duly sworn, says:

1. He is one of the attorneys for the plaintiffs herein.

2. That he has handled and appeared in similar matters wherein the rights of romanian nationals were involved throughout the United States.

3. The policy of the State of New York, which plaintiffs challenge as unconstitutional, is accurately set forth by the following:

a.) Defendant, Edward Silver, Surrogate of King's County, in his reply of October 15, 1965 (Appendix III annexed hereto) to a request addressed to him by an heir

in Romania for the release and immediate payment of his distributive share in the modest amount of $2,989.63 (R. Reply Affidavit of John R. Vintilla), wrote, pertinent hereto, as follows:

> "I have given serious consideration to your letter of August 28, 1965, in which you request the release of your distributive share in the above estate. It is the public policy of the State of New York to withhold distribution to legatees who would not have the benefit or use or control of their bequest. The Appellate Courts of this State have held that residents of Rumania are within this description. As a Judge of the Surrogate's Court, I am bound by the ruling of the higher court, and as an individual I am in full agreement with it. Accordingly, and despite my personal desire to help you because of your advanced age, physical infirmity and need for the money, I must advise you that if formal application for the payment of your bequest in full is made to me, I would be constrained to deny the same."

b.) Defendant, Arthur Levitt, wrote, relevant hereto, to several romanian claimants and affiant in connection with the release and payment of funds being withheld by his office, the following:

> "Upon the basis of the documentation you have submitted we have conferred with our Legal Division and as a result we are of the opinion that you have established yourself as the owner of the funds involved. We regret to say however, that at the present time pursuant to a policy recommended by our Attorney General, we are not able to effect payments to residents of certain Eastern European Countries including Roumania because the situation exists which makes it doubtful as to whether the recipients of our checks would receive full value for the dollar amount thereof." (28 February, 1962, Appendix I.)

"We have given your letter careful consideration together with the documentation forwarded therewith. We are advised that the Department of Law is aware of the removal of Romania from the list of countries contained in Treasury Circular 655. The Department of Law however has advised us that it will continue its position as to payments to distributees domiciled in Romania. A recent decision in the Surrogate's Court, New York County (Matter of Greenberg, New York Law Journal, June 16, 1964) upheld the position of the Attorney General of this State. Presumably this case will be appealed but until a reversal is had we must hold to the position taken in our letter to your client of February 28, 1962." (16 November, 1964, Appendix II.)

"* * *, we are not approving any claims payable to residents of Roumania who are within the jurisdiction of the Soviet Government." (June 6, 1962, Appendix IV.)

"* * *, our position in allowing refunds, on claims held by residents of Roumania has not changed and any action that you take at this time to obtain such a refund would be entirely at your own risk and also that of the claimants as we would not make any payments until such time as those who are entitled to said payments are without the jurisdiction of Roumania." (June 15, 1966, Appendix V.)

"We regret to inform you, however, that inasmuch as you represent a Rumanian National who claims to be entitled to the above estate, payment of the above captioned item may not in any event be made to him under existing policy and regulations until such time as it is believed such Rumanian Nationals will be enabled to have the full use or benefit of such funds as may be transmitted to them." (June 13, 1962, Appendix VI.)

"Please be advised that notwithstanding any present Federal regulations in reference to the trans-

mission of money to private individuals residing in countries within the jurisdiction of the Soviet Union, the policy of this Department is to withhold any such payments until and when the parties residing within such countries are outside of the jurisdiction of the Soviet Union." (July 6, 1962, Appendix VII.)

"We regret to advise, notwithstanding the numerous citations set forth in your letter, that this department will not honor any claims from Rumanian nationals as of the present time." (March 4, 1963, Appendix VIII.)

4. The most recent pronouncement of the New York courts with regard to the rights of nationals and residents of Romania to receive the proceeds from New York estates or other funds due them is the case of *In Re Greenberg*, 46 Misc. 883, 261 N.Y.S. 2d 176 (Surr. Ct. 1964), aff'd 24 App. Div. 2d 435 (1st Department, 1965) leave to appeal denied, 17 N.Y. 2d 417 (December 30, 1965); Defendant Joseph A. Cox, Surrogate of New York County, refused payment to the legatee in Romania in *Greenberg*, and, among the reasons for his action, stated in his opinion:

"The burden of establishing that the Rumanian national would have the benefit or use or control of the money or other property due him was upon the attorneys in fact (Surrogate's Ct. Act, ss. 269-a). The evidence offered to meet this burden consisted primarily of testimony of an officer of the Rumanian Legation in Washington who stated that by reason of his employment for four years as a lawyer he had become an expert in the estate law of Rumania. This witness testified that a Rumanian resident receives his inheritance in Rumanian currency at the rate of 12 lei for each dollar, which is twice the government controlled rate of exchange for commercial transactions. This witness also testified as to the free use

of such money within Rumania although it could not be transmitted outside of that country. The testimony was that a Rumanian must notify the State Bank of any inheritance and must act through an attorney in fact in the collection of the money.

It must be recognized that, whether or not Rumania imposes restrictions within the meaning of section 269-a, it is an iron curtain country under Soviet dominance and, for such reason, facts either as to the operation of Rumanian laws or that country's monetary practices are not available to an inquirer who might be regarded as influenced by capitalist doctrines. It would appear that this was the unfortunate position in which the Attorney General found himself. The Attorney General was able to offer evidence of certain restrictive provisions of Rumanian law governing the ownership and use of property generally and these restrictions are well recognized as consistent with the Communist program of subordinating individual freedom for the material advancement of the Communist state. However, these restrictions do not seem to be peculiar to beneficiaries of foreign inheritances. While the attorneys in fact for the Rumanian national make much of the preferential exchange rate purportedly applicable to foreign inheritances, this argument is premised upon the assumption that an exchange rate of double that available in certain commercial transactions within Rumania is necessarily fair. This assumption can only be as sound as its premise, which is that the normal rate of exchange embodies a modicum of fairness. Casting grave doubt upon the usefulness of this formula is the established fact that Rumanian lei are procurable in this country at a rate of 31¾ lei to the dollar. Upon this basis the rate of exchange applicable to foreign legacies must be regarded as confiscatory and it cannot be validly contended that a Rumanian who would forfeit such a large portion of his legacy is receiving the benefit or use of $150,000."

5. The appellate court, in affirming the order of Surrogate Cox in *Greenberg*, declared:

> "* * * The substantial differential between the Romanian internal rate of exchange applicable to estate distributions received from foreign countries and the external rate of exchange establishes that the distributee 'would not have the benefit or use or control of the money or other property due him,' as required by section 269-a of the Surrogate's Court Act. With respect to the other circumstances in Romania affecting the distributee's interest in view of the large sum of money involved ($120,797.69), and the distributee's failure to make a personal appearance to testify in support of his own claim, there is grave doubt additionally, that he will have the benefit, use or control of the money or property."

6. The defendant, Surrogate Samuel DiFalco, in the estate of Jerotheos Stavrou, in which plaintiff, George Fundi is a distributee, in settling said estate, ordered (NYLJ, 8/3/65), pertinent hereto, as follows:

> "Any sum payable to legatees or distributees in Rumania will be deposited in court pursuant to section 269-a of the Surrogate's Court Act (Matter of Greenberg, NYLJ, June 16, 1964 (Cox, S.), aff'd App. Div. 1st Dept, NYLJ)."

7. The defendant, Surrogate Silver, in construing the will in the *Matter of the Estate of Mary Moroson* entered the following order (N. Y. L. J. 5/12/65):

> "The shares of the distributees, who are Romanian Nationals, will be deposited with the director of finance of the City of New York pursuant to section 269-a of the surrogate's court act (Matter of Greenberg, NYLJ June 16, 1964, p. 14, cols. 3-4 (Cox, S)). Settle decree."

8. The Surrogate, in the judicial settlement in the *Estate of Maurice Siegel,* wherein the rights of plaintiff, Anghel Goldstein are involved, decreed:

> "Ordered, Adjudged and Decreed that the distributive share to which the said Angel Goldstein is entitled be paid into this Court by depositing the sum of $2,230.40 with the Treasurer of the City of New York to the credit of this proceeding, and the Treasurer of the City of New York hereby is directed to deposit said sum of $2,230.40 in any savings bank located in the County of Bronx for the benefit of said Angel Goldstein and subject to the further order of this court, and it is further"

10. According to the decision of the Supreme Court of the United States in *Zschernig,* the history and operation of the New York statute, as hereinabove shown, "make clear that (Section 269-a) is an intrusion by the State into the field of foreign affairs which the Constitution entrusts to the President and the Congress." Mr. Justice Douglas, in the majority opinion of the Court in the *Zschernig* case stated, "as one reads the Oregon decisions, it seems clear that foreign policy attitudes, the freezing or thawing of the 'cold war,' and the like are the real desiderata." And, as a footnote to this statement, the opinion of the Court recites: "Such attitudes are not confined to the Oregon courts. Representative samples from other States would include statements in the New York courts, * * *." In commenting upon such statements and attitudes of the state courts in their application of the "Iron-Curtain" statute, Mr. Justice Douglas further declared: "* * * Yet they, of course are matters for the Federal Government, not for local probate courts."

11. Mr. Justice Stewart, in a concurring opinion joined by Mr. Justice Brennan, in *Zschernig,* reviewed the

provisions of the Oregon "iron-curtain" statute, one of which is similar substantially with the statute hereunder attack ("benefit, use and control"), and commented, as follows: "I believe that all three of the statutory requirements on their face are contrary to the Constitution of the United States. In my view, *each* of the three provisions of the Oregon law suffers from the same fatal infirmity. *All three launch the State upon a prohibited voyage into a domain of exclusively federal competence.* Any realistic attempt to apply any of the three criteria would necessarily involve the Oregon courts in an evaluation, either expressed or implied, of the administration of foreign law, the credibility of foreign diplomatic statements, and the policies of foreign governments. Of course state courts must routinely construe foreign law in the resolution of controversies properly before them, *but here the courts of Oregon are thrust into these inquiries only because the Oregon legislature has framed its inheritance laws to the prejudice of nations whose policies it disapproves and thus has trespassed upon an area where the Constitution contemplates that only the National Government shall operate.*" (Emphasis supplied.) A substitution of New York in the place of Oregon in the foregoing declaration readily reveals that New York statute "suffers from the same fatal infirmity."

WHEREFORE, Deponent submits that the Surrogate's Court Act, Section 269-a, is invalid and unconstitutional, and respectfully requests that the relief prayed for in the complaint herein be granted.

JOHN R. VINTILLA.

(Jurat omitted.)

APPENDIX E.

20 May 1968

Chief Judge of the
U. S. District Court
Southern District of New York
United States Court House
Foley Square
New York, New York, 10007

RE.: Goldstein et al v. Cox et al

Dear Sir:

I am taking the liberty of writing to you in view of the apparent confusion of the disposition of plaintiffs' motion for summary judgment in the light of the mandate of the Supreme Court of the United States in this case, and the remand order of the United States Court of Appeals for the Second Circuit to this court of March 8, 1968.

Inasmuch as we deem the mandate of the Supreme Court of the United States and the remand order of the Court of Appeals self executing, as chief counsel for the plaintiffs in the above entitled cause, I would sincerely appreciate a communication from your court about the disposition of plaintiffs motion for summary judgment heretofore filed in your court.

Respectfully yours,

JOHN R. VINTILLA,
Chief Counsel for Plaintiffs.

APPENDIX F.

UNITED STATES DISTRICT COURT
New York, N. Y. 10007

May 24, 1968

John R. Vintilla, Esq.
550 Hanna Buildir.g
Cleveland, Ohio 44115

RE: Goldstein et al. v. Cox et al.

Dear Sir:

I respond to your letter of May 20, 1968. You pose certain questions which I do not believe it to be my responsibility to answer.

If you had given me the index number of the case I might have been in a position to quickly ascertain the information which you desire and supply it, but I do not consider it my obligation to consult the indices of this court to ascertain the docket number of the case in which you are interested.

Finally, if you are appearing in this court for the purposes of this case only, I would appreciate your supplying me with the name and address of a member of the bar of this court authorized to represent you here.

Very truly yours,

SIDNEY SUGARMAN.

APPENDIX G.

STATE OF NEW YORK
DEPARTMENT OF AUDIT AND CONTROL
ALBANY

August 5, 1968

NASTA, Juliu, attorney-in-fact for
Opreana Comanicu
J. P. Morgan & Company
Year 1955, Sheet 3, Line 7
Account: BD 47801
Abandoned Property

John R. Vintilla, Esq.
550 Hanna Building
Cleveland, Ohio 44115

Dear Sir:

Reference is made to your inquiry dated July 31, 1968.

Please be advised that there has been no change in the policy of this Department not to transmit any funds to persons residing in Romania or to attorneys-in-fact for such persons.

We have been advised that the Zschernig case, referred to in your letter, does not apply to the situation involved herein and that the Goldstein case is now on appeal before the United States Court of Appeals for the Second Circuit. Our policy wil continue in effect pending determination of the issues presented in the Goldstein case.

Very truly yours,

ARTHUR LEVITT,
State Comptroller,

By J. J. MULLENS,
Assistant Director.

A.L.Kleigman/md